Filed 3/30/10 In re M.H. CA1/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re M.H., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. M.H., Defendant and Appellant.	A124958 (Alameda County Super. Ct. No. SJ05002854-01)

Minor M.H. appeals from a jurisdictional order sustaining the allegation he violated Penal Code section 211, and from the court's dispositional order. Appellant's court-appointed counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to appellant, result in reversal or modification of the judgment. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436; see *Smith v. Robbins* (2000) 528 U.S. 259.) Counsel has notified appellant he can file a supplemental brief with the court. No supplemental brief has been received from appellant. After independently reviewing the record, we conclude no arguable issues are presented for review and affirm the judgment.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

In January or February 2009, Erwin S. was skating with friends in the parking lot of the Cloverleaf Bowl on Fremont Boulevard in Fremont, when appellant and another

youth approached asking for change for a dollar. Appellant asked if Erwin had an iPod, but Erwin replied it was an MP3 player, fearing appellant would "take it or something" if he believed it was an iPod. In fact, Erwin was wearing headphones and had an iPod in his pocket. As appellant pulled the headphones cord, Erwin tried to "pull back 'cause I didn't want him to take it from me," yet felt the iPod coming out of his right pocket. Although appellant stated he wanted to know what type of music Erwin listened to, assuring him, "I'm not going to steal it from you," Erwin did not believe him. While the larger appellant took the iPod from Erwin, he also removed his jacket and said something indicating "he was going to fight me or something." After taking the iPod, appellant told Erwin, "see you later," and walked with his companion down Fremont Boulevard laughing.

Erwin subsequently saw appellant on the street near a Jack in the Box about two or three weeks later. Once again, on March 2, Erwin saw appellant when a friend called to inform him the police "found those guys that robbed you." Appellant had been arrested for an unrelated offense. Police took Erwin to the station, placed him in the backseat of a police car, and brought two handcuffed persons, one of whom was appellant, to the front of the vehicle about 50 to 60 feet away. Appellant and the other individual were illuminated by the vehicle's front lights. Taking 20 to 30 seconds, because he "didn't want to make . . . a bad mistake," Erwin identified appellant as the individual who took his iPod.

On March 4, 2009, the Alameda County District Attorney filed a petition alleging appellant, already a ward of the court, committed attempted robbery (Pen. Code, §§ 664/211; count 1), uttering offensive words in a public place likely to produce a violent reaction (Pen. Code, § 415, subd. (3); count 2), and robbery (Pen. Code, § 211; count 3).

On March 19, 2009, appellant filed a motion to suppress (Welf. & Inst. Code, § 700.1). The motion contested the legality of appellant's detention and arrest and sought to suppress the in-court and out-of-court identifications of him. The juvenile court on April 13 concluded it was unnecessary to determine the legality of the detention because

Erwin had made a positive in-court identification based on his contact with appellant who he had seen on the day of the robbery for "actually quite a while." To the court, this robbery looked like "a fairly long exchange compared to many of the exchanges we have in robberies." The court further observed, "Grabbing the iPod. He's face to face the whole time. He watched him walk away laughing. So he has contact with him at least twice, if not more." Finally, the court noted Erwin identified appellant on a prior occasion, March 2.

The court sustained the petition as to count 3, robbery, but made no finding as to counts 1 and 2.

On May 13, 2009, the court continued appellant as a ward and committed him to the custody of the probation officer for appropriate placement.

Appellant filed a timely notice of appeal.

DISCUSSION

Appellant was represented by counsel throughout the proceedings. We find no indication in the record counsel provided ineffective assistance.

We requested briefing from both parties on the issue of whether "the trial court [was] required to hear appellant's motion to suppress . . . with respect to the legality of the detention, and if so, was the victim's in-court identification of appellant tainted by the failure to hold a suppression hearing." After reviewing the briefs, we find no cognizable error and no prejudice to appellant in the trial court's failure to hold a motion to suppress hearing. Here, appellant and Erwin were face-to-face for "quite a while." Although Erwin provided no description of his assailant to police, initially preferring not to report the incident, he did not identify anyone other than appellant. He readily selected appellant at the pretrial identification procedure. The time between the offense and the identification was a month or less, in between which, Erwin had seen appellant at a Jack in the Box. While appellant challenges the validity of the juvenile court's finding on the ground Erwin did not testify his in-court identification was based solely on his recollection of the circumstances of the robbery, neither *United States v. Crews* (1980) 445 U.S. 463 nor any other authority cited by appellant requires such self-serving

testimony to sustain a finding of independent source. The evidence on which the trial court relied was certainly sufficient to support a finding Erwin's in-court identification was based on his independent recollection of the circumstances of the robbery.[1]

There was no dispositional error.

This court has reviewed the entire record and finds no arguable legal issues requiring further briefing.

The judgment is affirmed.

_____
Margulies, J.

We concur:

_____
Marchiano, P.J.

_____
Banke, J.

[1] We note, however, it would have been a better practice for the juvenile court to hold a hearing on the legality of the detention.